THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOS. 10012 & 10013 OF 2006

WRIT PETITION NO. 10012 OF 2006

Date: 17.11.2006

Between:

J.V.S. Ramars.

… Petitioner

and

G. Sudarshan and two others.

… Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOS. 10012 & 10013 OF 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The A.P. Administrative Tribunal, in its common order in O.A.Nos.8203, 8194, 8195 and 8605 of 2005 dated 2.5.2006, held that the government had neither the power nor the competence to transfer employees working in the "Hyderabad Metro Water Supply and Sewerage Board" (hereinafter referred to as the 'Board'), in the face of the express provisions of the "Hyderabad Metropolitan Water Supply and Sewerage Board Act, 1989" (hereinafter referred to as the 'Act') and the service regulations made thereunder (hereinafter referred to as the "Regulations") and that such orders of transfer were void ab initio and could not be acted upon. Aggrieved thereby, the 4th respondent in O.A.8203 of 2005 and the 3rd respondent in O.A.8195 of 2005 have filed W.P.Nos.10012 and 10013 of 2006 respectively.

G.O.Rt. No.1629, MA dated 06.12.2005 and G.O.Rt. No.1628 MA dated 06.12.2005 were under challenge in O.A. No.8195 and 8203 of 2005 respectively. In G.O.Rt.No.1628, MA dated 6.12.2005, the state government transferred the petitioner in W.P.10012 of 2006, who was earlier working in the Quli Qutub Shah Urban Development Authority as a Superintending Engineer, to the post of Chief General Manager of the Board in the place of

the 1st respondent who was posted in his place at the Quli Qutub Shah Urban Development Authority. In G.O.Rt.No.1629 dated 6.12.2005, the state government transferred the petitioner in W.P.10013 of 2005, who was working as the Executive Engineer, Division No.7, Municipal Corporation of Hyderabad, to the O & M Division in the Board in the place of the 1st respondent who, in turn, was posted as Executive Engineer, Division NO.7 of the Municipal Corporation of Hyderabad. The first respondent in W.P.10013 of 2006, prior to the impugned orders of transfer in G.O.Rt.No.1629 MA dated 6.12.2005, was working as the General Manager, O & M Division IV, HMWSSB, Hyderabad.

Facts, in both the writ petitions, shall briefly be noted. The applicant in O.A.8195 of 2005 (1st respondent in W.P.10013/06), was directly recruited to the post of Deputy Executive Engineer through the A.P.P.S.C. in 1987 and, after his selection, was posted to the Hyderabad Metro Water Works and Sewerage and Sewage Treatment Works. This institution was constituted into the Hyderabad Metro Water Supply & Sewerage Board under Act 15 of 1989. Under the Act, every officer, or employee of the A.P. Public Health & Municipal Engineering service, serving in a post not below the rank of Assistant Engineer, in the Hyderabad Metro Water Works and Sewerage & Sewage Treatment Works, was required to be continued in service, under the same terms and conditions, until their absorption was finally determined by the Board in accordance with the rules and regulations made under the Act. The Act contemplates such officer or employee being given an opportunity to opt for the service of the Board or for repatriation to the service of his parent department. In terms of the powers

conferred under Section 80 of the Act, service regulations were made and notified in B.P.No.16 dated 30.1.1992. Regulation 23 thereunder provides that every officer or employee of the Public Health and Municipal Engineering Service, and the Public Health and Municipal Engineering Subordinate Service, in the post not below the rank of an Assistant Engineer in the Hyderabad Metro Water Works, or the Sewerage and Sewage Treatment works, working in the Board as on 01.11.1989 shall be given an opportunity to opt for the service of the Board or for repatriation to the service of his parent department. Such options are required to be submitted to the Managing Director and the options once exercised, and accepted by the Managing Director, are to be final.

In his application, filed in O.A.No.8195 of 2005, the respondent-applicant submitted that he was invited to and had exercised his option for absorption into the service of the Board, that the Board, in its proceedings dated 05.08.1992, had accepted the options category-wise for various posts. The option of the respondent-applicant, in the category of Deputy Executive Engineers, was accepted by the Managing Director in Statement No.III and his name was shown at Sl.No.26 in the original list and at Sl.No.10 in re-confirmed list. The respondent-applicant contended that he and the other persons shown in the list have been absorbed in the service of the Board. The government, vide G.O.Ms.No.321 dated 16.4.2005, directed the Board to finalise the options exercised in the year 1992 and subsequent options, if any, given by those persons who were working in the Board as on 01.11.1989. After the aforesaid orders of the government, the Board published the list of Engineers whose options were accepted and were absorbed in the service of the Board in the

year 1992 and the subsequent options of those who were working in the Board as on 01.11.1989. The respondent- applicant's name is shown at Sl.No.10 against the post of Dy. Executive Engineers. The respondent applicant contended that he stood absorbed into the service of the Board and, therefore, the question of his being transferred outside the Board did not arise under the Presidential Order. He contended that though the petitioner, (3rd respondent in the O.A.), was invited to exercise options during the year 1992, he did not choose to do so and therefore his name did not find place in the Board Proceedings dated 05.08.1992. The respondent–applicant contended that, since the petitioner was not in the service of the Board and was not a member of the Board's service (in the absence of any option being exercised), he should not have been transferred to the service of the Board as that would be in violation of the provisions of Act 15 of 1989 as also the Presidential Order. The respondent–applicant contended that the Board was a corporate body and that, under Regulation 9 of the Service Regulations read with Annexure IV thereof, the Managing Director of the Board was the appointing authority for the post of General Manager. According to the respondent– applicant, the government had no power or jurisdiction either to transfer him out of the Board or to bring the petitioner (3rd respondent in the O.A.) into the service of the Board as it was in violation of Act 15 of 1989, the service regulations made thereunder and the Presidential Order. According to the respondent–applicant the Board was not a government department and the government could not, therefore, effect transfers either from the Board to another department of the government or to the Municipal

Corporation of Hyderabad or vice-versa.

The 1st respondent–applicant in W.P.10012 of 2006, was appointed in the year 1976. He was promoted as a Dy. Executive Engineer in the year 1987 and as an Executive Engineer in the year 2000. He was further promoted as Superintendent Engineer, under G.O.Ms.No.1398 MA dated 14.12.2004, and was posted as the Chief General Manager of the Board in the place of Sri S.Prabhakar Sarma. The Managing Director of the Board, vide proceedings dated 22.12.2004, posted the respondent – applicant in Project Classification, Circle No.2 against the existing vacancy pursuant to which he joined duty and has been working thereat ever since. The petitioner, (4th respondent in the O.A.), was working as the Superintending Engineer in Quli Qutubshah Urban Development Authority for a year prior to the filing of the O.A and his posting thereat was at his own request. The respondent – applicant contended that G.O.Ms.No.144 dated 7.6.2005 applied even to cases of transfer of officers in the rank of Superintending Engineers, that there was a ban on transfers and that transfers could only be made in relaxation of the ban orders and, that too, only after the concurrence of the Finance Minister and the Chief Minister was obtained. He contended that the impugned G.O.Ms. No. 1628 dated 06.12.2005 did not disclose any such exercise and was contrary to the ban orders and to the policy underlying it. The respondent-applicant alleged that his transfer was at the instance of the petitioner – 3rd respondent and was not on administrative grounds.

The Tribunal, while examining the competence of the state government to effect transfers and postings of public health

engineers into and out of the Board, noted the definition of 'public health engineers' under Section 2(1)(i) of the Act, to Section 80 whereunder the Board is empowered to frame regulations and to Section 110 which provides that the Managing Director shall be the Chief Controlling Authority. The Tribunal noted the contents of the letter dated 12.12.2005, addressed by the Board to the Government, with regards transfer of the 1st respondent in W.P.10013 of 2005 from out of the Board, wherein attention was drawn to Section 110 of the Act and the Government informed that the Managing Director was the Chief Controlling authority for effecting transfers within the Board for smooth administration and for effective functioning of the water supply and sewerage system. The Government was requested to reconsider its decision in G.O.Rt.No.1629 MA dated 06.12.2005, to allow the Managing Director to effect transfers within the Board and to retain the 1st respondent in W.P.10013 of 2006 in the Board itself. The Tribunal noted that the Board had been asserting that transferring persons, within and out of the Board, was within the purview of the Chief Controlling Authority i.e., the Managing Director of the Board and any interference by the government in this regard could only be after prior consultation with the Board. The Tribunal held that the service regulations, issued under B.P.No.16 dated 30.01.1993, did not confer any power on the government to exercise control over the individuals who were posted into and out of the Board. The Tribunal held that reliance placed by the petitioner herein, (respondent in the O.A), on Section 81 of the Act, to contend that the Government was empowered to issue instructions to the Board was misplaced in as much as the government was empowered to

give directions, under Section 81 of the Act, only on questions of policy and, at best, only policy issues relating to transfers could be considered as matters of policy and that routine transfers, for administrative reasons, could not be treated as policy matters. The Tribunal held that, even in such cases, Section 81(1) contemplated prior consultation with the Board before any such directions were given by the government and the impugned proceedings did not disclose any such consultation as having been resorted to by the government and that, on the other hand, it was the assertion of the government that they had inherent powers. The Tribunal noted that, while the government's powers to effect transfers, in respect of employees of the public health engineering department, were traceable to the A.P. State and Subordinate Service Rules and the special rules relating to their services, the powers conferred on the Board were under the statute i.e., the Hyderabad Metro Water Supply & Sewerage Board Act, 1989. The Tribunal held that the powers vested in the Board, under the Act, were superior to the powers of the government which were traceable to the transitory proviso to Article 309 of the Constitution of India whereunder service rules were issued by the government. The Tribunal held that the government had neither the power nor the competence to issue the impugned proceedings of transfer, in the face of the express provisions of the Act as well as the Service Regulations issued thereunder by the Board with the prior approval of the government and as such were ab initio void and could not be acted upon.

Sri Nooty Ramamohan Rao, learned counsel for the petitioner, would submit that, since the petitioners and the respondents in both the writ petitions were members of the

Municipal Engineering Service and were government servants, it was always open to the government to recall its employees, who had earlier been deputed to the Board, or to send its employees on deputation to the Board. Learned counsel would submit that while recalling an employee, sent earlier on deputation to the Board, was the sole prerogative of the government, it is the Board alone which can be said to be aggrieved by the action of the government in sending its employees on deputation to the Board and that the respondent–applicant cannot be said to be aggrieved thereby. According to the learned counsel it was not open to the respondent–applicant to contend that the Board should not accept employees, sent on deputation, into its service. Learned counsel would submit that, since there exists an employer-employee relationship between the government on the one hand and the petitioners and the respondents-applicants on the other, it was for the government to decide as to where its employees should be posted. Learned counsel would contend that the litmus test was whether the petitioners and the respondents still continued to be the members of the Municipal Engineering Service and, as long as they continued to be so, their place of posting would necessarily be at the choice of the government and it was not for the respondents-applicants to contend that they alone, and not the petitioners herein, should be deputed to the services of the Board. Learned counsel would submit that, merely because the Board is a distinct legal entity, the government was not disentitled, under the Presidential Order, from deputing employees to the Board or to recall its employees who had earlier been deputed to the services of the Board. Learned counsel would refer to G.O.Ms.No.1398 dated 14.12.2004 wherein the 1st respondent applicant was

temporarily promoted as a Superintending Engineer, Public Health and Municipal Engineering Service under Rule 37(a)(i) of the Andhra Pradesh State and Subordinate Service Rules, to submit that his promotion was purely temporary and that, on promotion, he was posted as the Chief General Manager in the Board in the place of Sri S. Prabahakar Sarma. Learned counsel would refer to the order dated 22.12.2004, whereunder the Board had posted the respondent-applicant as the Chief General Manager, Project Construction Circle II against the existing vacancy, and submit that, while the Board had accepted the deputation of the 1st respondent – applicant, a member of the A.P. Public Health & Municipal Engineering Service and had posted him as the Chief General Manager, it was well within the powers of the government to recall his services, vide G.O.Rt. No.1628 dated 6.12.2005, and to post the petitioner in his place. Learned counsel would submit that, while deputation of a government servant to the services of the Board may necessitate the Board's concurrence, it was not necessary for the government either to consult the Board or to seek its concurrence to recall its employees who had earlier been deputed to the services of the Board. Learned counsel would submit that, since the government could always recall the services of the respondent–applicant and he had no right to continue in the service of the Board, it was not for him to make out a grievance with regards deputation of the petitioner to the Board as these were all matters between the government and the Board. Learned counsel would submit that the relief sought for by the respondent – applicant, in the O.A. filed before the Tribunal, was to declare G.O.Rt.No.1628 dated 6.12.2005 as illegal and arbitrary and to

declare that the petitioner was not entitled to be posted as the Chief General Manager of the Board. Learned counsel would submit that the respondent – applicant had no right to continue in the services of the Board and, as long as he continued to be an employee of the government, it was for the government, in its wisdom, to decide as to where he should be posted. Learned counsel would submit that the Division Bench judgment of this Court, in **M.P.Anantha Narayana v. State of A.P.**[1], had no application to the case on hand. Learned counsel would make a detailed analysis, of the provisions of Article 371-D of the Constitution of India and the Presidential Order, to submit that nothing in the Presidential Order disentitled the government either from recalling the services of the respondents – applicants who had earlier been deputed to the service of the Board or to depute the petitioners to serve the Board

Sri P. Balakrishna Murthy, learned counsel for the respondent–applicant in W.P.No.10013 of 2005, would submit that, under Section 3(1)(b) of Act 15 of 1989, the respondent – Board is a body corporate and as such is a legal entity distinct from the government. Learned counsel would submit that under Section 113 of the Act, every officer employed in the erstwhile Hyderabad Metro Water Works and Sewerage and Sewage Treatment Works shall stand transferred to and become an officer of the Board with such designation as the Board may determine and shall hold the same tenure, at the same remuneration and the same terms and conditions of service applicable before such transfer, and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Board. Learned

counsel would submit that, under Section 113(2), until the question of his absorption in the Board is finally determined, the respondent–applicant, who was in the service of the Board as on 01.11.1989, is statutorily required to be continued in the service of the Board and the government has no right to recall him back to the Municipal Engineering Service. Learned counsel would refer to section 80 whereunder the Board has been conferred the power to make Regulations and submit that, in exercise of the said powers, the Board had made the Hyderabad Metropolitan Water Supply and Sewerage Board Service Regulations, 1992. Learned counsel would refer to Regulation 9 whereunder the appointing authority for all the posts in the Board shall be as specified in Annexure IV. He would refer to the applicable regulations, with regards absorption under Section 113(2) of the Act, to submit that employees of the Public Health and Municipal Engineering Service, who held posts not below the rank of an Assistant Engineer, and were working in the Board as on 01.11.1989, were required to be given an opportunity to opt for the service of the Board or to remain in the service of their parent department, that such options were required to be exercised and accepted by the Managing Director within the time prescribed, that the procedure for consideration and acceptance of options shall be as specified by the Board and that the options once exercised and accepted by the Managing Director shall be final. Learned counsel would submit that, for the post of General Manager (Operations), the appointing authority, under Annexure IV, was the Managing Director. He would refer to B.P.No.16 dated 30.01.1992 wherein the Board's Service Regulations were approved. Learned counsel would refer to the proceedings of the Board dated 05.08.1992 and submit that a

Screening Committee was constituted to consider and finalize options of Engineers, from the rank of Assistant Engineers and above, that the Screening Committee, after two sittings, had submitted its report and that the recommendations of the Screening Committee, in its report dated 05.08.1992, were accepted by the Board. Consequential orders were issued and the unconditional options exercised by Engineers, from the rank of Assistant Engineers upto the rank of Superintending Engineer, as mentioned in Statement I to V appended to the order, were accepted and they were deemed to have been absorbed into the services of the Board in the relevant categories in the Engineering Service of the Board. Learned counsel would refer to Statement No. III, which relates to the individuals whose options were accepted and were absorbed in the categories of Deputy Executive Engineers and Dy. Geneal Managers (Engineering)/Projects under the Engineering Service of the Board, wherein the respondent – applicant's name was shown at Sl.No.26. Learned counsel would submit that even thereafter the government, in G.O.Ms.No.321 MA dated 16.4.2005, had directed the Board to finalise the options exercised in the year 1992 and subsequent options, if any, given by persons who were working in the Board as on 01.11.1989. Learned counsel would also refer to the letter dated 18.11.2005 addressed by the Managing Director of the Board, wherein the list of Engineers who had confirmed their options to be absorbed in the service of the Board was submitted to the government, for issuance of final orders in the matter. In the list of Engineers, annexed to the said letter dated 18.11.2005, the respondent–applicant's name was shown at Sl.No.10 and it was recorded therein that his option had been confirmed.

According to the learned counsel, if the proceedings dated 05.08.1992 were to be taken as orders of absorption, the respondent–applicant is an employee of the Board consequent upon his absorption and as such is no longer an employee of the government. Learned counsel would submit that, even if it were held from the subsequent proceedings of the Managing Director dated 18.11.2005 that options had not yet been finalized, even then under Section 113(2), as the respondent–applicant had exercised his option to be absorbed into the services of the Board, he was statutorily required to be continued in the service of the Board till the options were finalsed. Learned counsel would submit that, in any view of the matter, the impugned orders of transfer, in G.O.Ms. No. 1629 dated 06.12.2005, were contrary to the statutory provisions under Act 15 of 1989 and had been rightly declared by the Tribunal to be illegal. According to the learned counsel the petitioner herein, having not exercised his option either in 1992 or at any time thereafter, cannot seek to be appointed into the services of the Board since the Division Bench of this Court, in W.P.26072 of 2006 and batch dated 28.6.2006, had held that it was not open to the government to impose its employees on the respondent – Board.

Sri M.Surender Rao, learned counsel for the respondent – applicant in W.P.10012 of 2006, while adopting the submissions of Sri P. Balakrishna Murthy, would, in addition, submit that the government, in G.O.Ms.No.144 dated 7.6.2005, had lifted the ban on transfers only for a limited period upto 30.6.2005 and that the ban was re-imposed thereafter. Learned counsel would submit that, in view of the ban imposed in G.O.Ms.No.144 dated 7.6.2005, it was not open to the government to effect transfers thereafter

under G.O.Rt.No.1628 dated 6.12.2005. On being asked as to whether the respondent – applicant, in W.P.No.10012 of 2006, had exercised his option under Section 113(2) of Act 15 of 1989, learned counsel would fairly submit that neither the petitioner nor the respondent – applicant in W.P.10012 of 2006 had exercised any option for absorption into the services of the Board.

Before examining the rival contentions, it is necessary to take note of the applicable statutory provisions. The "Hyderabad Metropolitan Water Supply & Sewerage Board Act, 1989" is an Act to make provision for water supply, sewerage and sewage treatment in the Hyderabad Metropolitan Area and for matters connected therewith. Section 2(a) defines the Board to mean the Hyderabad Metropolitan Water Supply and Sewerage Board constituted under Section 3. Section 2 (k) defines "prescribed" as prescribed by rules made by the government or the regulations made by the Board as the case may be under the Act. Section 2(l) defines "Public Health Engineer" to mean an officer appointed by the Board to be the Public Health Engineer to discharge the duties of sanction and water supply under the provisions of the Act and includes any officer placed in charge of the duties of the Public Health Engineer. Chapter II of the Act relates to the establishment of the Board and Section 3 thereunder relates to constitution and composition of the Hyderabad Metropolitan Water Supply and Sewerage Board. Under Section 3(1)(a) the government shall constitute a Board in the name of "The Hyderabad Metropolitan Water Supply and Sewerage Board." Under sub-section (b), the Board shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act and the rules made thereunder, to acquire, hold and dispose of

property and enter into contracts and shall by the said name sue and be sued. Section 80 confers powers on the Board to make regulations. Section 113 is the provision relating to employees employed in connection with water supply and sewerage undertakings. It reads thus:

"**Provisions to employees employed in connection with water supply and sewerage undertakings:-**

(1) Every officer and other employee employed with the Hyderabad Metropolitan Water Works and sewerage and sewage treatment works as the case may be, shall stand transferred to and become an officer or other employee of the Board with such designation as the Board may determine and shall hold by the same tenure, at the same remuneration the same terms and conditions of service applicable immediately before such transfer and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Board:

Provided that any service rendered by such officer or employee before such transfer shall be deemed to be service rendered under the Board.

(2). Every officer or employee of the Andhra Pradesh Public Health and Municipal Engineering service and the Andhra Pradesh Public Health and Municipal Engineering Subordinate service serving in the posts not below the rank of Assistant Engineer in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works shall continue to serve in the Hyderabad Metro Water Works or Sewerage and Sawage – treatment works under the same terms and conditions applicable to them in their parent Department and until their absorption is finally determined by the Board in accordance with the rules and regulations made for this purpose under this Act:

Provided that an officer or employee shall be given an opportunity to opt for the service of the Board or to remain in the service of his parent department.

(3). The Board may employ any officer or other employee transferred under sub-section (1) in the discharge of such functions under this Act, as it may think proper and every such officer or other employee shall discharge those functions accordingly.

In exercise of the powers conferred under Section 80 of the Act, the Board made the "Hyderabad Metropolitan Water Supply and Sewerage Board Service Regulations, 1992." Regulation 9

relates to the appointing authority. Regulation 21 relates to transfers and postings and thereunder the Managing Director shall be the authority competent to make transfers and postings from one post to another in any service under the Regulations. Regulation 21.2 empowers the Managing Director to delegate the powers of transfers and postings to any officer of the Board and to prescribe the procedure by an order. Part IV of the Regulations relates to absorption under Section 113(2) of the Act. Regulations 23 to 28 thereunder read thus:

IV. ABSORPTION UNDER SECTION 113(2) OF THE ACT:-

23. Every officer or employee of P.H. & M.E. Service and P.H. & M.E. Subordinate Service serving in the post not below the rank of Assistant Engineer in the Hyderabad Metropolitan Water Works or Sewerage and Sewage Treatment works working in the Board as on 01.11.11989 shall be given an opportunity to opt for the service of the Board or for repatriation to the service of his parent department.

24. Such option shall be exercised and submitted direct to the Managing Director within a period of time as prescribed by the Board.

25. The procedure for consideration and acceptance of options and conditions of acceptance including rejection of options shall be as prescribed by the Board.

26. The option once exercised and accepted by the Managing Director shall be final.

27. The total number of engineers in each category to be absorbed shall be limited to the actual number of engineers working in the Board in each category from the rank of A.E and above in P.H.& M.E. Sub-ordinate Service and P.H. & M.E. Service on the date of issue of notification of these regulations.

28. The differential shortage if any between the existing number of personnel and the number of persons finally accepted on account of the exercise of the procedures for absorption shall be met from amongst the P.H. & M.E. service by prorata replacement."

Since the primary contention, which requires examination in these writ petitions, revolves around the question as to whether the power of the government to recall its employees, who had earlier been deputed to serve the Board, is circumscribed by Section 113 of the Act, it is necessary to examine the scope of

Section 113 and the regulations made in relation thereto.

While Section 113(1) of the Act relates to officers and employees, employed earlier with the Hyderabad Metro Water Works and Sewerage and Sewage Treatment works, sub-section (2) thereof relates to officers and employees of the A.P. Public Health and Municipal Engineering Service, and the A.P. Public Health and Municipal Engineering Subordinate Service, serving in posts not below the rank of an Assistant Engineer in the Hyderabad Metro Water Works or the Sewerage and Sewage Treatment works. While sub-section (1) relates to employees of the Water Works and Treatment Works itself, sub-section (2) relates to officers and employees of PH & ME service of the state government who were posted to these works. Section 113(2) enables such of the employees of the A.P. Public Health and Municipal Engineering Service, and the A.P. Public Health and Municipal Engineering Subordinate Service, who were serving in posts not below the rank of Assistant Engineer in the Hyderabad Metro Water Works or Sewerage Treatment Works to continue to serve the Board under the same terms and conditions as applicable to them in their parent department and until their absorption is finally determined by the Board in accordance with the rules and regulations made for this purpose under the Act. The Proviso to Section 113(2) enables such an officer or employee to be given an opportunity to opt for the service of the Board or to remain in the service of his parent department. As noted above, the manner in which the absorption of officers and employees, of the A.P. PH & ME Service and A.P.PH & ME Subordinate Service, into the service of the Board is to be determined is required to be prescribed by the rules and regulations made for this purpose

under the Act. Chapter IV of the Regulations made by the Board, in exercise of the powers conferred under Section 80 of the Act, relates to absorption under Section 113(2) of the Act. While Regulation 23 requires officers and employees, of the PH & ME Service and PH and ME Subordinate Service, serving in posts not below the rank of an Assistant Engineer in the Hyderabad Metro Water Works, or the Sewerage and Sewage and Treatment Works, working in the board as on 01.11.1989 to be given an opportunity to opt for the service of the Board or for repatriation to the parent department, Regulation 24 requires such an option to be exercised and submitted directly to the Managing Director within the prescribed period. The procedure for considering and accepting such options is required to be prescribed by the Board under Regulation 25. Regulation 26 provides that the option once exercised, and accepted by the Managing Director, shall be final. In view of Section 113(2) read with Regulation 23, such of the officers and employees of the A.P. PH & ME Service and the A.P. P.H. & M.E. Subordinate Service, serving in posts not below the rank of an Assistant Engineer in the Hyderabad Water works and Sewerage and Sewage Treatment works as on 01.11.1989, are required to be continued in the service of the Board until their absorption is finally determined by the Board.

While examining the scope of Section 113 of the Act the Division Bench of this Court, in **M.P. Anantha Narayana**[1], observed:

"……Sub section (1) of Section 113 declares that every officer or employee with the Hyderabad Metropolitan Water Works and Sewerage and Sewage treatment works stood transferred and become an officer or an employee as the case may be of the Board. **In substance, those officers and employees who were working in connection with the operation of supply of drinking water to the Hyderabad city or disposal of the waste**

water of the Hyderabad city, (though as noticed earlier, are the employees of the State of Andhra Pradesh and the Municipal Corporation of Hyderabad), are mandated by the Legislature to be transferred to the newly constituted Board which is a distinct legal entity.

But for the legislative mandate none of the above mentioned personnel would have any legal obligation to serve the newly constituted Board. While compelling them to work with a new master (Board), the Legislature also took care to see that their freedom of choosing their employer is not unduly restricted and therefore, stipulated further under Section 113 that the various service conditions which were applicable to each one of them prior to the transfer contemplated under Section 113, are maintained intact. It further gave an option to each one of them either to continue with the newly constituted Board or stay back with their original employer. The Board is also given the liberty either to accept the option exercised by any one of the employee, however, such a decision either to accept the option of the employee or not is required to be made in accordance with the rules and regulations to be framed by the Board. The Board being an instrumentality of the State, is obviously under a duty to act rationally in arriving at such decision, an obligation inherent in the very nature of the decision making process of such bodies……"

A close scrutiny of Section 113 is required having regard to the issues involved in the present case, but the same would be undertaken at the appropriate place in the judgment. Whatever indicated earlier is only the broad scheme of Section 113.

As a matter of fact, on the constitution of the Board, a large number of personnel of various ranks were compelled to continue working with the newly constituted Board in view of the mandate contained under Section 113. It appears that certain regulations were framed by the Board dealing with certain service conditions of the employees of the Board in its Proceedings dated 30th January 1992.

Chapter-IV of the regulations purports to deal with the absorption process of the employees contemplated under Section 113. It appears that some of the employees who stood transferred exercised their options. Though there is some dispute regarding the fact whether the Board has in fact taken a decision either to accept or reject the options exercised by the employees to continue in the service of the Board, it is not really necessary for the present to examine the said issue……." (emphasis supplied)

The Division bench examined the question as to whether employees working in posts connected with the operations of supply of drinking water to Hyderabad, on the date of commencement of the Act, were alone entitled to exercise options either to join the service of the Board or to stay back in their

parent service. The other question which fell for consideration was whether posting of Engineers, of the Public Health and Municipal Engineering Services, belonging to Zones I to V, to the Board, was violative of the Presidential Order. In this context the Division bench observed:

"…….The authority of the State to post any one of its employees to the Board is required to be examined. We have already noticed that under Section-3 of the 1989 Act the Board is declared to be a body corporate having perpetual succession and a common seal, with power, (subject to the provisions of this Act and the rules made thereunder), to acquire, hold and dispose of property, and enter into contracts, and shall by the said name sue and be sued.

Under Section-6 of the Act, the Legislature authorized the Board to appoint a Chief Engineer, Public Health Engineer, and such other officers and employees as may be required to enable the Board to carry out its functions under this Act. In the ultimate analysis employment which creates master and servant relationship is essentially a contract; the Board is authorized to enter into such contract under Section-3 of the Act. When the State is deploying some of its employees to discharge various functions of the Board, such deployment is required to be under some authority of law. Such an authority can be conferred either by an express provision of a statute or by an understanding between the Board and the Government if the Board seeks the assistance of the State requesting that the service of some of the employees of the State be lent to the board, an arrangement, which is normally understood in the service jurisprudence, as deputation.

In the absence of either of the above-mentioned situations, the State would be plainly incompetent to post any one of its employees on an autonomous entity like the Board. Statutory bodies like the Board are required to function strictly in accordance with the provisions of the enactment under which they are created. No specific provision under the 1989 Act is brought to our notice to establish that either the State is invested with such authority to deploy its employees to the Board as it pleases or any material is placed before this Court to establish that the Board, at any point of time, requested the State to deploy some of its employees to enable the Board to discharge the duties entrusted to it under the Act. Therefore, all the orders of appointment/posting made subsequent to the commencement of the 1989 Act of either officers or employees of the State to discharge functions under the board are plainly illegal and unsustainable, irrespective of the fact whether the Presidential Order is applicable to the employment under the board.

Numbers of employees of the State, as a matter of fact, have been deployed to the Board either under the orders of the Government or some times even under the orders of the Engineer-in-Chief, Public

Health. Such orders were accepted without any demur by the Board, which is headed by a Chairman, who is none other than the Chief Minister of the State - an amusing state of affairs. Apparently the concept of autonomy of the bodies like the Board is more theoretical than real and meant for the consumption of the Courts, whenever such bodies find it convenient to assert their autonomy. The executive, both permanent and political, obviously, believe that the Board is another department of the Government and it did not matter to them whether in law the Board had certain rights, obligations and privileges. The state of affairs which is an obvious (though not a necessary and legal) consequence in view of the composition of the Board as specified under Section 3 of the Act, which is loaded with members of the executive……." (emphasis supplied).

The Division bench held that, on formation of the Board, the power of appointment of officers and employees, for the purpose of carrying out the functions entrusted to the Board, was vested with the Board. To quote:-

"…..The various orders of appointments made by the State Government subsequent to the constitution of the Board deploying employees to the Board, in our view, is plainly illegal and in contravention of Section 6 of the 1989 Act. We have already analyzed as to how such appointments came to be accepted by the Board without any application of mind. It must also be mentioned here that even if these appointments were to be treated, as was suggested at the bar, to be appointments made on some kind of deputation, from the State service to the service of the Board, as the Board acquiesced with such appointments and therefore, there was an implied request from the Board seeking deployment of Engineers from the State service, the manner in which such appointments were made do not appear to be consistent with the philosophy underlying in Para 14(e) of the Presidential Order.

Para 14(e) makes an exception to the general principle of reservation of the posts in favour of local candidates even in the matter of employment under local authority on the ground that in a Major Development Project, expertise and skill, wherever available are required to be utilized, unfettered by the restriction contained in the other parts of the Presidential Order. Therefore, the relevant consideration could only be expertise and skill. However, in practice, such appointments were made on other considerations……..

……..We do not think that anything more is required to demonstrate that atleast some of the appointments made subsequent to the constitution of the Board and made by the State of Andhra Pradesh, apart from other legal infirmities, simply suffer from an illegality on the ground that these appointments to the Board, are not made in consonance with the object for which the Major Development Projects were exempted from the purview of the Presidential Order.

The Division bench summarized its conclusions thus:

(i) **that all appointments under the Board are required to be made by the Board only and the State of Andhra Pradesh has no authority to make any appointment to any post under the Board.**

(ii) that the Board while making such appointments is entitled to adopt any mode of appointment known to law i.e., either direct recruitment or promotion from its own cadres; or even by deputation wherever the Board feels it necessary from the service of the State of Andhra Pradesh or any other legally permissible mode of recruitment. However, such appointments must be made in accordance with an appropriate regulation framed by the Board.

(iii) that in making such appointments, the Board is bound by the discipline of Paras 8 (1)(b), 8(1)(c)(ii) and 8 (2)(b) of the Presidential Order, except to the extent the appointments are relatable to the Major Development Projects vested with the Board. Needless to mention that such a power must be exercised bona fide and in public interest.

Lastly, we hold that in view of our conclusion that all the appointments made by the State of Andhra Pradesh, subsequent to the constitution of the Board, are illegal and having regard to the fact that the Board acquiesced with such appointments for a long time, we direct the Board to review each one of those appointments and decide whether the services of any one of these appointees is really indispensable for the proper functioning of the Board and such of those employees, whose services are to be found dispensable, shall be repatriated to their parent department……(emphasis supplied)

The respondent-applicant, in W.P. No. 10013 of 2006, was working in the Hyderabad Metro Water Works and Sewerage and Sewage Treatment works on 01.11.1989 and as such was continued in the services of the Board as statutorily required under Section 113(2) of the Act. He also exercised his option under Section 113(2) to remain in the service of the Board. While there is a dispute as to whether the option exercised by several officers and employees, including the respondent-applicant, had been finalized or not and as to whether they are already absorbed in the services of the Board, the fact that the respondent-applicant had

exercised his option and his name is reflected, on more than one occasion, in the list of optees, is not in dispute. Even if the option exercised by the respondent-applicant is held as not having been finalized as yet, the respondent-applicant is entitled to continue to remain in the service of the Board, until his absorption is finally determined by the Board in accordance with the Regulations. The action of the state government in seeking to transfer him, vide G.O.Rt. No. 1629 dated 06.12.2005, from the post of General Manager O&M Division IV of the Board to Division NO. VII of the Municipal Corporation of Hyderabad, is ultravires Section 113(2) of the Act and is, therefore, illegal. As has been held by the Division bench of this Court in **M.P. Ananthanarayana**[1], the State Government is incompetent to post any of its employees to autonomous entities, like the Board, which are required to function strictly in accordance with the provisions of the enactment under which they are created. In the absence of any specific provision under the Act, which invests in the State government the authority to deploy its employees to the Board as it pleases, more so in the absence of any such request by the Board, the action of the government in posting its officers and employees after 01.11.1989 to discharge functions under the Board is illegal and unsustainable. There is nothing on record to indicate that the posting of the petitioner, in W.P. No. 10013 of 2006, who was working as an Executive Engineer in Division No. VII of the Municipal Corporation of Hyderabad to O&M Division IV of the Board, was at the request of the Board. Since the respondent-applicant, in W.P. No. 10013 of 2006 cannot be transferred from out of the service of the Board, in view of the prohibition under

Section 113(2) of the Act, G.O.Rt. No. 1629 dated 06.12.2005 is quashed and the order of the Tribunal, in O.A. No. 8195 of 2005 dated 02.05.2006, to the extent it held G.O.R.T. No. 1629 dated 06.12.2005, could not be acted upon, is affirmed.

Neither the petitioner nor the 1st respondent in W.P. No. 10012 of 2006 have exercised their options, under the proviso to Section 113(2), to remain in the service of the Board and as such are not entitled for the protection under Section 113(2) of the Act. It is not in dispute that both the petitioner and the 1st respondent, in W.P. No. 10012 of 2006, are officers of the A.P. Public Health and Municipal Engineering Service. Since they are the government servants, it is for the government, in its wisdom, to recall its officers, deputed to another organization, and to require the organization/Board to repatriate such an officer/employee to his parent department. The order of the government, in G.O. Rt. No. 1628 dated 06.12.2005, whereby the 1st respondent-applicant, who was working as a Superintending Engineer in the Board, was posted to the Quli Qutubshah Urban Development Authority, cannot be faulted and to this extent the order of the Tribunal, in O.A. No. 8203 of 2005 dated 02.05.2006, is required to be set aside. Reliance placed by the respondent-applicant, on G.O.Ms. No. 144 dated 07.06.2005, to contend that there is a ban on transfers does not merit acceptance. G.O.Ms. No. 144 dated 07.06.2005 is in the nature of administrative guidelines and the conditions prescribed therein cannot be enforced in proceedings under Article 226 of the Constitution of India.

The question, however, remains as to whether the government could have directed that the petitioner in W.P. No.

10012 of 2006, who was then working as the Superintending Engineer in the Quli Qutubshah Urban Development Authority, be transferred and posted as Chief General Manager of the Board. There is nothing on record to indicate that such a posting was at the request of the Board. As held by the Division bench of this Court in **M.P. Ananthanarayana**[1], it is not open to the government to impose its employees on to the Board, more so in the absence of any specific request by the Board in this regard. As such the posting of the petitioner, in W.P. No. 10012 of 2006, to the services of the Board, without its consent, must be held to be illegal.

G.O.Rt. No. 1628 dated 06.12.2005 to the limited extent the respondent-applicant was recalled and posted to the Quli Qutubshah Urban Development Authority is upheld. However the other portion of the order, whereby the petitioner was transferred and posted as the Chief General Manger of the Board is quashed and the order of the Tribunal, in O.A. No. 8203 of 2005 dated 02.05.2006, is modified to the extent indicated above.

W.P. No. 10012 of 2006 is allowed in part and W.P. No. 10013 of 2006 is dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH RANGANATHAN,J

MRKR/ASP

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[1] (Judgment in W.P.No.26072 of 2006 and batch dated 28.6.2006)